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U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA AT OMAHA

DUANE L. CHRISTENSEN,

Plaintiff,

v.

THE QWEST PENSION PLAN and THE  
EMPLOYEE BENEFITS COMMITTEE OF  
THE QWEST PENSION PLAN,

Defendants.

NO. 8:04CV633

STIPULATION AND PROTECTIVE  
ORDER

**I. STIPULATION**

The parties hereby stipulate to the terms of the following Protective Order and agree that it may be entered by the Court without further notice of presentation to any party.

1 DATED this 10th day of May, 2005.

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Attorneys for Defendants The Qwest Pension  
Plan and The Employee Benefits Committee of  
the Qwest Pension Plan

## II. ORDER

Pursuant to the foregoing stipulation of the parties, to NECiVR 5.3, and to Fed. R. Civ. P. 26(c), it is hereby ordered that the following provisions shall apply to all discovery in this litigation:

1. This Protective Order shall apply whether the materials or documents have been produced pursuant to formal discovery, by subpoena or by agreement.

2. The term "documents" as hereinafter used includes but is not limited to written, photographic or electronic media extracts, summaries thereof and attachments thereto; answers to interrogatories; requests for admission and answers thereto; deposition transcripts and exhibits; answers to requests for production; and any portions of Court papers which quote from or summarize any of the foregoing.

3. All documents, information and/or similar materials produced in this litigation, or specific portions thereof, may be marked or otherwise designated by the parties as "confidential" if:

- (a) They contain financial or other proprietary information that is held confidential by either party;
- (b) They include or are part of an individual's personnel or employee benefits records or similar files, including the individual's identifying information such as his or her name, address, telephone number, or social security number, that a party to this litigation treats as confidential; or
- (c) They describe, contain or disclose internal corporate information that is legitimately held confidential within the corporation; or
- (d) They are described in NECiVR 5.3(a) or (b).

1 The determination of whether produced materials fall into one of the above categories shall  
2 be made in the first instance by the party from whom discovery is sought. If there is a  
3 disagreement between the parties as to whether particular produced materials have been  
4 properly designated as "confidential," the dispute may be resolved by the Court.  
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9 4. The parties recognize that experience may disclose that further categories of  
10 documents should also be treated as "confidential." Entry of this Protective Order does not  
11 foreclose further agreements by counsel to keep documents confidential or application to the  
12 Court for protection of other confidential information.  
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17 5. If either party determines to mark information as confidential, that shall be  
18 done by stamping each confidential page of documents with the notice "confidential" prior  
19 to its production or, in the case of documents produced by non-parties to this litigation,  
20 within thirty (30) days of their receipt by counsel of record, the party requesting protection  
21 under this order shall notify opposing counsel in writing for which documents it is  
22 requesting a designation of "confidential" under this order. In the case of nondocumentary  
23 materials, "confidential" shall be marked prominently on the item.  
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31 6. Except as expressly provided for in this Protective Order, "confidential"  
32 materials and documents and any information contained therein shall not be communicated  
33 or disclosed in any manner, either directly or indirectly, to any person or entity and shall be  
34 used only for the prosecution and/or defense of this litigation and for no other purpose.  
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37 Notwithstanding the preceding, nothing in the Protective Order shall in any way limit or  
38 preclude either party from using any of the files, records, information or materials created or  
39 maintained for any of the business purposes for which they were created or maintained. In  
40 addition, this Protective Order does not preclude defendants from using any "confidential"  
41 documents or information produced by defendants to plaintiffs in this action, to defend its  
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1 position in other litigation, provided that if the confidential documents or information which  
2 defendants are attempting to use in other litigation relates to personal information or  
3 documents regarding the plaintiff, then defendants agree that they will make a good faith  
4 effort to obtain a Protective Order similar to this one to protect the confidentiality of the  
5 plaintiff's personal information. The same provision applies to plaintiff's productions. This  
6 provision does not serve as a release of any information defendants hold or obtain about  
7 plaintiff.  
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15 7. "Confidential" documents may be referred to in interrogatory answers,  
16 motions and/or briefs and may be used in depositions and marked as deposition exhibits in  
17 this litigation. However, no such document should be used for any of these purposes unless  
18 it, or the portion of the court paper wherein it is revealed, is appropriately marked and, if  
19 filed with the Court, is filed under seal or other appropriate protections under NECiVR  
20 5.3(c) are arranged by the parties or the Court. Nothing in this Protective Order shall limit  
21 or prevent the use of any "confidential" document or material in open court at hearings in or  
22 during the trial of this litigation, provided that such use shall not relieve the parties from  
23 their obligations under this order, including, without limitation, the obligation to file  
24 "confidential" documents under seal.  
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34 8. Except as provided above or pursuant to Court order, "confidential"  
35 documents shall not be disclosed to anyone except:  
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39 (a) The attorneys of record and their employees involved in the conduct of this  
40 litigation and plaintiff;  
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42 (b) Any person who was an author or addressee of the document or who is  
43 shown on the document as having received a copy of it;  
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45 (c) The Court, Court personnel, Court reporters and similar Court personnel;  
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- 1 (d) Any deposition or trial witness in this litigation when shown to such witness  
2 before or during his or her testimony, provided the confidential item shown to  
3 the witness has a reasonable and bona fide relationship to his or her testimony  
4 and subject to paragraph 9 below;  
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8 (e) Consultants and experts retained by any party for purposes of assisting in the  
9 preparation, investigation or presentation of claims or defenses in this  
10 litigation;  
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13 (f) Those current or former employees, officers and/or directors of defendants  
14 who are assisting in prosecuting or defending this claim.  
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18 9. Prior to being shown "confidential" documents, any person falling within  
19 paragraph 8(d) through 8(f) hereof shall agree in writing to be bound by the terms of this  
20 order by signing an agreement to be found in the form of Attachment A hereto.  
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23 10. A deponent may, before or during the deposition, be shown and examined  
24 about stamped "confidential" documents subject to the terms of this Protective Order.  
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27 11. Either party may either during a deposition, or within twenty one (21) days  
28 after the date the deposition is held, designate portions of that deposition, and exhibits  
29 thereto not already designated confidential, as "confidential." Confidential information  
30 within the deposition shall be described by subject matter, if a transcript is not available, or  
31 may be designated by underlining the portions of the pages that are confidential and marking  
32 such pages with substantially the following legend: "Confidential – subject to protection  
33 pursuant to Court order." Until the expiration of the 21-day period, the entire deposition  
34 will be treated as subject to protection against disclosure under this Order unless both parties  
35 agree that no confidential information is at issue. In the event opposing counsel believes  
36 that any deposition passage so designated as confidential is not within the scope of this  
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1 Protective Order, counsel for both parties shall confer in an effort to resolve the matter. If  
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3 counsel are unable to resolve their differences, the party advocating confidentiality shall  
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5 promptly apply to this Court for a resolution of the dispute. Disputed documents shall  
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7 remain confidential pending determination of their status by the Court. If a party does not  
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9 timely designate confidential information in a deposition, then none of the transcript or its  
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11 exhibits not previously designated as confidential will be treated as confidential unless  
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13 otherwise agreed by the parties or ordered by the Court. If a timely designation is made, the  
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15 confidential portions and exhibits shall be filed under seal. Nothing in this Protective Order  
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17 shall limit the use of any deposition testimony or exhibits designated "confidential" in open  
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19 court at any hearing in or during the trial of this litigation, provided that such use shall not  
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21 relieve the parties from their obligations under this order, including, without limitation, the  
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23 obligation to file "confidential" documents under seal.

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25 12. No later than sixty (60) days following the "conclusion of these proceedings,"  
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27 as defined below, plaintiff's counsel shall return all "confidential" material to counsel for  
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29 defendants, together with all abstracts, copies and other documents containing any  
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31 information contained within the documents, including those portions of depositions  
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33 designated as confidential pursuant to the Protective Order. No later than sixty (60) days  
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35 following the "conclusion of these proceedings," as defined below, defendants' counsel shall  
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37 return all "confidential" material to counsel for plaintiff, together with all abstracts, copies  
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39 and other documents containing any information contained within the documents, including  
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41 those portions of depositions designated as confidential pursuant to the Protective Order.  
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43 "Conclusion of these proceedings" refers to the conclusion of this matter by trial or  
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45 settlement and, if concluded by trial, the exhaustion of available appeals or the running of  
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47 time for taking such appeals, as provided by applicable law.

1           13.     The parties expressly acknowledge and agree that all remedies under Fed. R.  
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3     Civ. P. 37 will be available to the Court, in its discretion, to sanction any violation of this  
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5     order.  
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7           DONE IN OPEN COURT this 11<sup>th</sup> day of May, 2005.  
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13                                 ~~THE HONORABLE RICHARD C. KOFF~~  
14                                 ~~UNITED STATES DISTRICT JUDGE~~  
15                                 *U. S. Magistrate Judge*  
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ATTACHMENT A

I, \_\_\_\_\_, have been advised by counsel of record for plaintiff or defendant (circle one) in the matter of DUANE L. CHRISTENSEN V. THE QWEST PENSION PLAN AND THE EMPLOYEE BENEFITS COMMITTEE OF THE QWEST PENSION PLAN, United States District Court Cause Number 8:04cv633, of the Protective Order governing delivery, exhibition, publication or disclosure to me of confidential documents and information produced in this litigation, together with the information contained therein. I have read a copy of said Protective Order and agree to abide by its terms, including its limitation on any further delivery, exhibition, publication or disclosure of documents and information subject to the order.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.